

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542

vs.

NO. 2018-14059

**MALLINCKRODT ARD INC FKA QUESTCOR PHARMACEUTICALS
INC**

COVER SHEET OF MOVING PARTY

Date of Filing October 03 2019

Moving Party INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542

Counsel for Moving Party DONALD E HAVILAND JR, Esq., ID: 66615; WILLIAM H PLATT II, Esq., ID: 83585

Document Filed (Specify) MOTION TO STRIKE DEFENDANT MALLINCKRODTS' OBJECTIONS
TO SUBPOENAS

Matter is: X (Appealable) | _ (Interlocutory)

Discovery Needed: (Yes) | (No)

If applicable, Civil Case Management Order Discovery Deadline: _____

CERTIFICATIONS - Check **ONLY** if appropriate:

Counsel certify that they have conferred in a good faith effort to resolve the subject discovery dispute. (Required by Local Rule 208.2(e) on motions relating to discovery.)

Counsel for moving party certifies that the subject **civil motion** is **uncontested** by all parties involved in the case. (If checked, skip Rule to Show Cause section below.)

By: DONALD E. HAVILAND

JR.

Counsel for Moving Party

RULE TO SHOW CAUSE - Check ONE of the Choices Listed Below:

____ Respondent is directed to show cause why the moving party is not entitled to the relief requested by filing an **answer** in the form of a **written response** at the **Office of the Prothonotary** on or before the **day of** **20**.

____ Respondent is directed to show cause, in the form of a **written response**, why the attached Family Court Discovery Motion is not entitled to the relief requested. Rule Returnable and Argument the day of , 20_____
at 1:00 p.m. at 321 Swede Street, Norristown, PA.

____ Respondent is directed to file a **written response** in conformity with the Pennsylvania Rules of Civil Procedure.

Rule Returnable at time of trial.

By:

Court Administrator

IN THE COURT OF COMMON PLEAS
FOR MONTGOMERY COUNTY, PENNSYLVANIA

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542 Plaintiff, v. MALLINCKRODT ARD, INC., <i>et al.</i> Defendants.	Civil Action No. 2018-14059
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[PROPOSED] ORDER

AND, NOW, this _____ day of _____, 2019, upon consideration of the Plaintiff's Motion to Strike the Objections of Mallinckrodt ARD Inc. and Mallinckrodt plc's (collectively, "*Mallinckrodt*") to the Notices of Subpoenas issued by Plaintiff International Union of Operating Engineers Local 542 ("*Plaintiff*"), it is hereby ORDERED and DECREED that Mallinckrodt's objections are STRICKEN.

BY THE COURT,

STEVEN C. TOLLIVER, SR., J.

Donald E. Haviland, Jr., Esquire (PA I.D. #66615)
haviland@havilandhughes.com

William H. Platt II, Esquire (PA I.D. #83585)
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HAVILAND HUGHES

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(215) 392-4400 Facsimile

*Counsel for Plaintiff,
International Union of Operating Engineers Local 542*

**IN THE COURT OF COMMON PLEAS
FOR MONTGOMERY COUNTY, PENNSYLVANIA**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542**

Plaintiff,

v.

MALLINCKRODT ARD, INC., *et al.*

Defendants.

Civil Action No. 2018-14059

**PLAINTIFF INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 542'S MOTION TO STRIKE DEFENDANT
MALLINCKRODT ARD, INC.'S OBJECTIONS TO SUBPOENAS**

Plaintiff, International Union of Operating Engineers Local 542 ("Plaintiff"), by and through its undersigned counsel, hereby moves the Court to enter an Order striking Defendants Mallinckrodt ARD, Inc.'s and Mallinckrodt plc's (collectively "Mallinckrodt") Objections to the three Subpoenas Plaintiff intended to serve on the following three individuals whom possess relevant knowledge about this matter. In support of this Motion, Plaintiff avers as follows:

1. This Court is familiar with the facts of this case and the Plaintiff's claims for violations of Pennsylvania's UTPCPL, negligent misrepresentation and conspiracy. In its

Complaint, Plaintiff alleges that, in order to market and sell Acthar, Mallinckrodt needed support from physicians, like those named in the Subpoenas. Am. Cmplt. ¶¶ 48-56, 70-77. The three physicians are all treating physicians of Plaintiff's beneficiaries.

2. On July 11, 2019, Plaintiff served Notices of its intention to serve Subpoenas on the following individuals: (a) Dr. Irene Greenhouse, M.D.; (b) Dr. Gary W. Clauser, M.D. and (c) Dr. Steven Urbaniak, D.O.) this Court denied the ESI Defendants' Preliminary Objections to Plaintiff's Amended Complaint in their entirety. *A copy of each Subpoena is attached hereto as Exhibit "A".*

3. The proposed Subpoenas sought from each prescribing doctor 17 specific and relevant document requests of each individual.

4. Some of the requests are not specific to just Mallinckrodt but to other defendants,¹ *i.e.*, all of the other defendants who did not object to the Notice. As a result, despite the Mallinckrodt's objections, the Subpoenas are properly issued as to Requests 2, 3, 4, 5, 6 (the ASAP Program is administered by other defendants as well), 9 (dealing with Continuing Medical Education course the physicians attended) and 17 (seeking studies conducted by the physicians concerning Acthar).²

5. On July 25, 2019, Mallinckrodt objected to all three Subpoenas contending that the Subpoenas "are beyond the scope of permissible discovery", among others. Mallinckrodt

¹ The other Defendants in this case are Express Scripts Holding Company, Express Scripts, Inc., CuraScript, Inc., CuraScript Sd, Accredo Health Group, Inc., and United BioSource Corporation.

² For example, Request "2" seeks "documents referring or relating to meetings and communications between You and United BioSource", not Mallinckrodt. Request "3" seeks "documents referring or relating to or reflecting Your prescriptions of Acthar to patients with MS"; and Request "8" seeks "documents related to meeting and communications between You and any other doctor(s) regarding Athar." Copies of the Subpoenas are attached hereto as Exhibit "A".

failed to particularize any objection to any request. Instead Mallinckrodt simply seeks to prevent discovery of the treating physicians in this case. The documents sought from the Plaintiff's beneficiaries' treating physicians are relevant and well-within the scope of permissible discovery.

6. Mallinckrodt prematurely and improperly objects to the Subpoenas on the physicians' behalf, claiming that the Subpoenas (a) "improperly harass and annoy" the intended recipients; (c) cause the recipients "unreasonable burden and harm Mallinckrodt's relationship with the prescribing physicians"; (d) "improperly cause embarrassment" to the physicians.

Objections to Subpoenas ¶¶ 2 and 3. Mallinckrodt has no standing to speak for these third-parties.

7. "Relevant materials in the hands of non-parties to a suit are generally discoverable." *Cosgrove v. Easton Coach Co.*, No. CV-2015-4557, 2016 Pa. Dist. & Cnty. Dec. LEXIS 62, at *4 (C.P. Ct. Apr. 26, 2016)(quoting *Rohm & Haas Co. v. Lin*, 992 A.2d 132, 145 (Pa. Super. 2010)).

8. Presumably without any idea whether or not the physicians have any responsive documents at all, Mallinckrodt interposed sweeping objections, none of which are supported by case law.

9. Plaintiff has in good faith attempted to discuss this dispute with counsel for Mallinckrodt after they were served. Plaintiff's counsel called for a conference with objecting counsel in an effort to resolve, or narrow, the dispute. After initially agreeing to reconsider its objections, Mallinckrodt wrote a letter late yesterday, reasserting the same sweeping objections.

A copy of the October 2, 2019 letter from R. Watts, Esquire to Wm. Platt II, Esquire is attached hereto as Exhibit "B".

10. Aside from the baseless claims of burden by Mallinckrodt, who has no burden whatsoever with respect to the third-party subpoena, the requests are relevant to Plaintiff's claims concerning, *inter alia*: (a) "The Defendants...unfair and deceptive conduct by intentionally and artificially inflating the costs of Mallinckrodt's Acthar, which Plaintiff paid for under a contract with Express Scripts, () by concealing from IUOE Local 542 the true costs for Acthar through undisclosed, direct contractual arrangements between Mallinckrodt and Express Scripts, charging inflated prices for Acthar, and collecting the money from Plaintiff for such prices, [and] 'conceal[ing] their direct relationships and deceiv[ing] Plaintiff as to Express Scripts' role in the distribution, pricing and sale of Acthar to IUOE Local 542 beneficiaries,''" Plaintiff made direct payments of these inflated prices to Express Scripts, for the benefit of Mallinckrodt, thereby unjustly enriching both Defendants. (Am. Cmplt ¶ 6); (b) Plaintiff's expenditure of "\$153,775.95 for just 5 administrations of Acthar given to 3 separate adult patients" (Am. Cmplt. ¶ 11); (c) the ASAP program ("[o]nce the patient (**or their physician**) contacts Mallinckrodt for a prescription of Acthar, they are directed to UBC." (emphasis added)(Am. Cmplt. ¶ 53); (d) the Acthar Start Form ("[t]he process, which is laid out in Mallinckrodt's Acthar Start Form, requires patient, **physician** and payor authorization before Mallinckrodt agrees to ship Acthar to patients via ESI/CuraScript.") (Am. Cmplt. ¶ 54); (e) Mallinckrodt's directive to **physicians**, like the physicians here, that "all new Acthar [] prescriptions should be submitted to the [ASAP program]." (Am. Cmplt. ¶ 70) and (f) Mallinckrodt Executive Vice-President Steve Cartt's admission that, "[w]e did some market research, . . . [t]alking to physicians and others about pricing 'gave us some comfort that the [new] strategy would work, and physicians would continue to use the drug, and payors would pay' . . . 'The reality was better than we expected.' ". (Am. Cmplt. ¶ 77).

11. Furthermore, all of the Requests pertain to each Count of the Amended Complaint—to which defendants unsuccessfully filed preliminary objections seeking full dismissal Plaintiff's case.

WHEREFORE, Plaintiff respectfully requests that this Court enter the attached Order Mallinckrodt's objections to the Subpoenas.

Respectfully submitted,

Dated: October 3, 2019

By: s/ Donald E. Haviland, Jr.
Donald E. Haviland, Jr.
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William H. Platt II
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201 South Maple Avenue, Suite 110
Ambler, PA 19002
Phone: (215) 609-4661
Fax: (215) 392-4400

*Counsel for Plaintiff,
International Union of Operating
Engineers Local 542*

CERTIFICATE OF SERVICE

I, Donald E. Haviland, Jr., hereby certify that a true and correct copy of the foregoing Motion to Strike Objections to Subpoenas was electronically filed and served on all parties of record via the Court's Electronic Filing System.

Dated: October 3, 2019

s/ Donald E. Haviland, Jr.

EXHIBIT A

Donald E. Haviland, Jr., Esquire (PA I.D. #66615)
haviland@havilandhughes.com

William H. Platt II, Esquire (PA I.D. #83585)
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(215) 392-4400 Facsimile

*Counsel for Plaintiff,
International Union of Operating Engineers
Local 542*

**IN THE COURT OF COMMON PLEAS
FOR MONTGOMERY COUNTY, PENNSYLVANIA**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542**

Plaintiff,

v.

MALLINCKRODT ARD, INC., *et al.*

Defendants.

Civil Action No. 2018-14059

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY
PURSUANT TO RULE 4009.21**

Plaintiff intends to serve a subpoena identical to the one that is attached to this notice.

You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Respectfully submitted,

Dated: July 11, 2019

By: s/ Donald E. Haviland, Jr.
Donald E. Haviland, Jr.
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William H. Platt II
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*Counsel for Plaintiff,
International Union of Operating
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Counsel for Plaintiff,
International Union of Operating Engineers
Local 542

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542**

Plaintiff,

v.

Civil Action No. 2018-14059

MALLINCKRODT ARD, INC., *et al.*

Defendants.

CERTIFICATE OF SERVICE

I, Donald E. Haviland, Jr. hereby certify that on this 11th day of July, 2019, a true and correct copy of the attached Notice of Intent to Serve Subpoena was served upon the following parties via electronic mail and first-class mail as follows:

G. Patrick Watson, Esquire
Lindsay Sklar Johnson, Esquire
Bryan Cave Leighton Paisner, LLP
One Atlantic Center, 14th Floor
1201 W. Peachtree Street, NW
Atlanta, GA 30309
Patrick.watson@bclplaw.com
Lindsayjohnson@bcplaw.com

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Wendy J. Bracaglia, Esquire
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Evan Kreiner, Esquire
Michael Menitove, Esquire
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Evan.Kreiner@skadden.com
Michael.Menitove@skadden.com

s/ Donald E. Haviland, Jr.

Donald E. Haviland, Jr., Esq.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY

International Union of Operating
Engineers Local 542, :
Plaintiff, :
v. : File No. 2018-14059

Mallinckrodt ARD, Inc., et al. :
Defendants. :

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.21**

TO: Gary W. Clauser, M.D. 1250 S. Cedar Crest Blvd., Suite 405
(Name of Person or Entity) Allentown, PA 18103

**Within twenty (20) days after service of this subpoena, you are ordered by the court to produce
the following documents or things:**

See Attachment "A".

at Haviland Hughes, 201 S. Maple Way, Suite 100, Ambler, PA 19002
(address)

**You may deliver or mail legible copies of the documents or produce things requested by the
subpoena, together with the certificate of compliance, to the party making this request at the address
listed above. You have the right to seek in advance the reasonable cost of preparing the copies or
producing the things sought.**

**If you fail to produce the documents or things required by this subpoena within (20) days after its
service, the party serving this subpoena may seek a court order compelling you to comply with it.**

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Donald E. Haviland, Jr., Esq.

ADDRESS: 201 S. Maple Way, Suite 100

Ambler, PA 19002

TELEPHONE: 215-609-4661

SUPREME COURT ID#: 66615

ATTORNEY FOR: Plaintiff, IUOE Local 542

BY THE COURT:

Mark Levy, Prothonotary

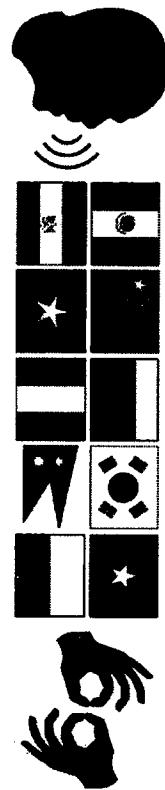
BY: Mark Levy
Agent/Deputy

DATE: _____

Seal of the Court

RETURN OF SERVICE:

Notice of Language Rights



On the _____ day of _____, 20_____,
I, _____,
served _____ (NAME OR PLACE SERVED)
with the foregoing subpoena by: _____
(Describe method of service)

FREE INTERPRETER
PO Box 311 Norristown, PA 19404
languageaccesscoordinator@montcopa.org
610-278-3231
www.pacourts.us/language-rights

Spanish/Español: Usted tiene derecho a un intérprete libre de costo. Para solicitar un intérprete favor de informárselo al personal judicial utilizando la información provista en la parte superior de este aviso.

Russian/Русский: У вас есть право на бесплатные услуги переводчика. Заявка на переводчика подается в суд по адресу, телефону или эл. почте, указанным выше в заголовке этого уведомления.

Mandarin/Cantonese Simplified Chinese/普通话/粤语简体中文: 您有权获得免费的口译员服务。若需要口译员, 请使用本通知上方提供的联系信息通知法院工作人员。

Arabic/العربي: يحق لك الحصول على مترجم دون دفع أي تكاليف من جانبك. اطلب مترجم، يرجى

Korean/한국어: 귀하는 비용에 대한 부담 없이 통역 서비스를 받을 권리가 있습니다. 통역 서비스를 요청하려면 본 통지서의 상단에

I verify that the statements in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

DATE: _____

(SIGNATURE) _____

ATTACHMENT "A"

Please produce the following documents:

1. All documents referring or relating to any meetings and communications between You and Mallinckrodt.
2. All documents referring or relating to meetings and communications between You and United BioSource.
3. All documents referring, relating to or reflecting Your prescriptions of Acthar to patients with MS.
4. All documents referring, relating to or reflecting Acthar treatment for unapproved uses and doses, such as 5-day dosing for multiple sclerosis.
5. All documents referring, relating to or reflecting Acthar off label treatments.
6. All documents shared between You and any Person concerning the Acthar Support & Access Program ("ASAP").
7. All Acthar Start Forms relating to Your prescriptions of Acthar.
8. All documents related to meetings and communications between You and any other doctor(s) regarding Acthar.
9. All documents referring, relating to or received during continuing medical education (CME) seminars or meetings during which Acthar treatment was discussed.
10. All documentation concerning payments for consulting or speaking engagements by Mallinckrodt.
11. All contracts or agreements between You and Mallinckrodt.
12. All documents referring or relating to reimbursements or payments for trips, travel, meals and entertainment from Mallinckrodt to You.
13. Any and all documents referring, relating to or reflecting of any payments, gifts or things of value to You from Mallinckrodt.
14. All Your tax returns reflecting on money paid by Mallinckrodt to You.
15. All documents relating to meetings and communications with Mallinckrodt sales representatives, including Stacyann Clancy and Art Veno.

Case# 2018-14059-168 Docketed at Montgomery County Prothonotary on 10/03/2019 3:12 PM, Fee = \$0.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

- 16. All documents provided to You, discussed, or generated during the meeting with Dr. Gunawardane on January 8, 2013, including notes.
- 17. All studies conducted by You concerning Acthar or ACTH, including all supporting materials therefor.

HAVILAND HUGHES

BY: *s/Donald E. Haviland, Jr.*
Donald E. Haviland, Jr.

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William H. Platt II, Esquire (PA I.D. #83585)
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(215) 392-4400 Facsimile

*Counsel for Plaintiff,
International Union of Operating Engineers
Local 542*

**IN THE COURT OF COMMON PLEAS
FOR MONTGOMERY COUNTY, PENNSYLVANIA**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542**

Plaintiff,

v.

MALLINCKRODT ARD, INC., *et al.*

Defendants.

Civil Action No. 2018-14059

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY
PURSUANT TO RULE 4009.21**

Plaintiff intends to serve a subpoena identical to the one that is attached to this notice.

You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Respectfully submitted,

Dated: July 11, 2019

By: s/ Donald E. Haviland, Jr.
Donald E. Haviland, Jr.
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William H. Platt II
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Counsel for Plaintiff,
International Union of Operating Engineers
Local 542

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542**

Plaintiff,

v.

Civil Action No. 2018-14059

MALLINCKRODT ARD, INC., *et al.*

Defendants.

CERTIFICATE OF SERVICE

I, Donald E. Haviland, Jr. hereby certify that on this 11th day of July, 2019, a true and correct copy of the attached Notice of Intent to Serve Subpoena was served upon the following parties via electronic mail and first-class mail as follows:

G. Patrick Watson, Esquire
Lindsay Sklar Johnson, Esquire
Bryan Cave Leighton Paisner, LLP
One Atlantic Center, 14th Floor
1201 W. Peachtree Street, NW
Atlanta, GA 30309
Patrick.watson@bclplaw.com
Lindsayjohnson@bcplaw.com

Herbert R. Giorgio, Jr., Esquire
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Joseph P. Walsh, Esquire
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Daniel J. Sherry, Esquire
Wendy J. Bracaglia, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
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wjbracaglia@mdwcg.com

Matthew M. Martino, Esquire
Evan Kreiner, Esquire
Michael Menitove, Esquire
Skadden, Arps, Slate, Meagher & Flom, LLP
Four Times Square
New York, NY 10036-6522
Matthew.Martino@skadden.com
Evan.Kreiner@skadden.com
Michael.Menitove@skadden.com

s/ Donald E. Haviland, Jr.

Donald E. Haviland, Jr., Esq.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY

International Union of
Operating Engineers Local 542

v.

: File No.

2018-14059

Mallinckrodt ARD, Inc. et al.

:

:

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.21**

TO: Irene Greenhouse, M.D. 2370 York Rd., Suite C3,
(Name of Person or Entity) Jamison, PA 18929

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

See Attachment "A"

at Haviland Hughes, 201 S. Maple Way, Suite 100 Ambler, PA 19002
(address)

You may deliver or mail legible copies of the documents or produce things requested by the subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Donald E. Haviland, Jr., Esq.

ADDRESS: 201 S. Maple Way, Suite 110
Ambler, PA 19002

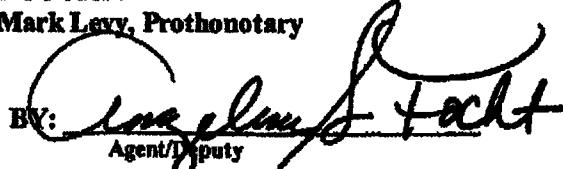
TELEPHONE: 215-609-4661

SUPREME COURT ID#: 66615

ATTORNEY FOR: Plaintiff, IUOE Local 542

BY THE COURT:

Mark Levy, Prothonotary

BY: 
Agent/Deputy

DATE: _____

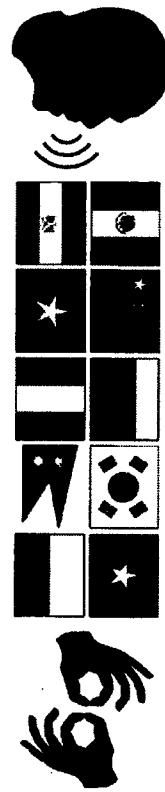
Seal of the Court

RETURN OF SERVICE:

On the _____ day of
_____, 20_____,

I, _____
served _____
(NAME OR PLACE SERVED)

with the foregoing subpoena by:
(Describe method of service)



FREE INTERPRETER
PO Box 311 Norristown, PA 19404
languageaccesscoordinator@montcopa.org
610-278-3231
www.pacourts.us/language-rights

Spanish/Español: Usted tiene derecho a un intérprete libre de costo. Para solicitar un intérprete favor de informárselo al personal judicial utilizando la información provista en la parte superior de este aviso.

Russian/Русский: У вас есть право на бесплатные услуги перевода. Заявка на переводчика подается в суд по адресу, телефону или эл. почте, указанным выше в заголовке этого уведомления.

Mandarin/Cantonese Simplified Chinese/普通话/粤语简体中文: 您有权获得免费的口译员服务。若需要口译员, 请使用本通知上方提供的联系信息通知法院工作人员。

Arabic/العربي: يحق لك الحصول على مترجم唇语人免费的从法官, 判决, 证据, 以及

Korean/한국어: 귀하는 비용에 대한 부담 없이 통역 서비스를 받을 권리가 있습니다. 통역 서비스를 요청하려면 본 통지서의 상단에

Notice of Language Rights

ATTACHMENT "A"

Please produce the following documents:

1. All documents referring or relating to any meetings and communications between You and Mallinckrodt.
2. All documents referring or relating to meetings and communications between You and United BioSource.
3. All documents referring, relating to or reflecting Your prescriptions of Acthar to patients with MS.
4. All documents referring, relating to or reflecting Acthar treatment for unapproved uses and doses, such as 5-day dosing for multiple sclerosis.
5. All documents referring, relating to or reflecting Acthar off label treatments.
6. All documents shared between You and any Person concerning the Acthar Support & Access Program ("ASAP").
7. All Acthar Start Forms relating to Your prescriptions of Acthar.
8. All documents related to meetings and communications between You and any other doctor(s) regarding Acthar.
9. All documents referring, relating to or received during continuing medical education (CME) seminars or meetings during which Acthar treatment was discussed.
10. All documentation concerning payments for consulting or speaking engagements by Mallinckrodt.
11. All contracts or agreements between You and Mallinckrodt.
12. All documents referring or relating to reimbursements or payments for trips, travel, meals and entertainment from Mallinckrodt to You.
13. Any and all documents referring, relating to or reflecting of any payments, gifts or things of value to You from Mallinckrodt.
14. All Your tax returns reflecting on money paid by Mallinckrodt to You.
15. All documents relating to meetings and communications with Mallinckrodt sales representatives, including Stacyann Clancy and Art Veno.

Case# 2018-14059-168 Docketed at Montgomery County Prothonotary on 10/03/2019 3:12 PM, Fee = \$0.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

- 16. All documents provided to You, discussed, or generated during any meeting with Dr. Gunawardane, including notes.
- 17. All studies conducted by You concerning Acthar or ACTH, including all supporting materials therefor.

HAVILAND HUGHES

BY: *s/Donald E. Haviland, Jr.*
Donald E. Haviland, Jr.

Donald E. Haviland, Jr., Esquire (PA I.D. #66615)
haviland@havilandhughes.com

William H. Platt II, Esquire (PA I.D. #83585)
platt@havilandhughes.com

HAVILAND HUGHES
201 South Maple Way, Suite 110
Ambler, PA 19002
(215) 609-4661 Telephone
(215) 392-4400 Facsimile

*Counsel for Plaintiff,
International Union of Operating Engineers
Local 542*

**IN THE COURT OF COMMON PLEAS
FOR MONTGOMERY COUNTY, PENNSYLVANIA**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542**

Plaintiff,

v.

MALLINCKRODT ARD, INC., *et al.*

Defendants.

Civil Action No. 2018-14059

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY
PURSUANT TO RULE 4009.21**

Plaintiff intends to serve a subpoena identical to the one that is attached to this notice.

You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Respectfully submitted,

Dated: July 11, 2019

By: s/ Donald E. Haviland, Jr.
Donald E. Haviland, Jr.
haviland@havilandhughes.com
William H. Platt II
platt@havilandhughes.com
HAVILAND HUGHES
201 South Maple Avenue, Suite 110

Ambler, PA 19002
Phone: (215) 609-4661
Fax: (215) 392-4400

*Counsel for Plaintiff,
International Union of Operating
Engineers Local 542*

Donald E. Haviland, Jr., Esquire (PA I.D. #66615)
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Counsel for Plaintiff,
International Union of Operating Engineers
Local 542

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542**

Plaintiff,

v.

Civil Action No. 2018-14059

MALLINCKRODT ARD, INC., *et al.*

Defendants.

CERTIFICATE OF SERVICE

I, Donald E. Haviland, Jr. hereby certify that on this 11th day of July, 2019, a true and correct copy of the attached Notice of Intent to Serve Subpoena was served upon the following parties via electronic mail and first-class mail as follows:

G. Patrick Watson, Esquire
Lindsay Sklar Johnson, Esquire
Bryan Cave Leighton Paisner, LLP
One Atlantic Center, 14th Floor
1201 W. Peachtree Street, NW
Atlanta, GA 30309
Patrick.watson@bclplaw.com
Lindsayjohnson@bcplaw.com

Herbert R. Giorgio, Jr., Esquire
Bryan Cave Leighton Paisner, LLP
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herb.giorgio@bclplaw.com

Philip D. Bartz, Esquire
Bryan Cave Leighton Paisner, LLP
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Washington, D.C. 20004
Philip.bartz@bclplaw.com

Joseph P. Walsh, Esquire
Walsh Pancio
2028 North Broad Street
Lansdale, PA 19446
joe@walshpancio.com

Daniel J. Sherry, Esquire
Wendy J. Bracaglia, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
620 Freedom Business Center, Suite 300
King of Prussia, PA 19406
djsherry@mdwcg.com
wjbracaglia@mdwcg.com

Matthew M. Martino, Esquire
Evan Kreiner, Esquire
Michael Menitove, Esquire
Skadden, Arps, Slate, Meagher & Flom, LLP
Four Times Square
New York, NY 10036-6522
Matthew.Martino@skadden.com
Evan.Kreiner@skadden.com
Michael.Menitove@skadden.com

s/ Donald E. Haviland, Jr.

Donald E. Haviland, Jr., Esq.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY

International Union of Operating :
Enginners Local 542,
Plaintiff :
v. : File No. 2018-14059
Mallinckrodt ARD, INC., et al, :
Defendants. :
:

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.21**

TO: Steven Urbanik, D.O. 940 Town Center Dr., Suite F50,
(Name of Person or Entity) Langhorne, PA 19047

**Within twenty (20) days after service of this subpoena, you are ordered by the court to produce
the following documents or things:**

See Attachment "A".

at Haviland Hughes, 201 S. Maple Way, Suite 100, Ambler PA 19002
(address)

**You may deliver or mail legible copies of the documents or produce things requested by the
subpoena, together with the certificate of compliance, to the party making this request at the address
listed above. You have the right to seek in advance the reasonable cost of preparing the copies or
producing the things sought.**

**If you fail to produce the documents or things required by this subpoena within (20) days after its
service, the party serving this subpoena may seek a court order compelling you to comply with it.**

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Donald E. Haviland, Jr., Esq.

ADDRESS: 201 S. Maple Way, Suite 100

Ambler, PA 19002

TELEPHONE: 215-609-4661

SUPREME COURT ID#: 66615

ATTORNEY FOR: Plaintiff, IUOE Local 542

BY THE COURT:

Mark Levy, Prothonotary

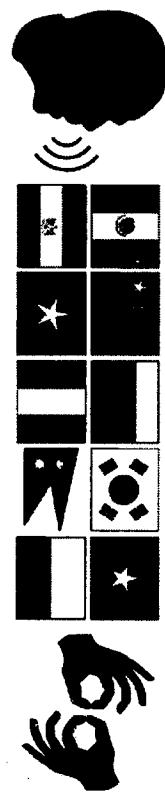
BY: Mark Levy
Agent/Deputy

DATE: _____

Seal of the Court

RETURN OF SERVICE:

Notice of Language Rights



On the _____ day of _____, 20_____
I, _____,
served _____
(NAME OR PLACE SERVED)
with the foregoing subpoena by:
(Describe method of service)

FREE INTERPRETER
PO Box 311 Norristown, PA 19404
languageaccesscoordinator@montcopa.org
610-278-3231
www.pacourts.us/language-rights

Spanish/Español: Usted tiene derecho a un intérprete libre de costo. Para solicitar un intérprete favor de informárselo al personal judicial utilizando la información provista en la parte superior de este aviso.

Russian/Русский: У вас есть право на бесплатные услуги переводчика. Заявка на переводчика подается в суд по адресу, телефону или эл. почте, указанным выше в заголовке этого уведомления.

Mandarin/Cantonese Simplified Chinese/普通话/粤语简体中文: 您有权获得免费的口译员服务。若需要口译员, 请使用本通知上方提供的联系信息通知法院工作人员。

Arabic/العربي: يحق لك الحصول على مترجم دون دفع أي تكلفة من جمالك. اطلب مترجم برجاء.

Korean/한국어: 귀하는 비용에 대한 부담 없이 통역 서비스를 받을 권리가 있습니다. 통역 서비스를 요청하려면 본 통지서의 상단에

I verify that the statements in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

DATE: _____

(SIGNATURE)

ATTACHMENT "A"

Please produce the following documents:

1. All documents referring or relating to any meetings and communications between You and Mallinckrodt.
2. All documents referring or relating to meetings and communications between You and United BioSource.
3. All documents referring, relating to or reflecting Your prescriptions of Acthar to patients with MS.
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16. All documents provided to You, discussed, or generated during the meeting with Dr. Gunawardane on January 8, 2013, including notes.
17. All studies conducted by You concerning Acthar or ACTH, including all supporting materials therefor.

HAVILAND HUGHES

BY: *s/Donald E. Haviland, Jr.*
Donald E. Haviland, Jr.

EXHIBIT B

Arnold & Porter

Ryan Z. Watts
Ryan.Watts@arnoldporter.com

October 2, 2019

VIA E-MAIL

William H. Platt II, Esq.
Haviland Hughes
201 South Maple Ave., Suite 110
Ambler, PA 19002

Re: International Union of Operating Engineers Local 542 v. Mallinckrodt
ARD Inc., et al, No 2018-14059 (Montgomery County Court of Common
Pleas)

Dear Mr. Platt,

I write regarding our telephone conference on Monday, September 30, 2019 concerning IUOE Local 542's proposed subpoenas directed to (i) Dr. Irene Greenhouse, M.D.; (ii) Dr. Gary W. Clauser, M.D.; and (iii) Dr. Steven Urbaniak, D.O. (collectively, the "Subpoenas") and Mallinckrodt's objections thereto. Mallinckrodt maintains the objections set forth its Objections to Subpoenas Pursuant to Rule 4009.21 filed on July 25, 2019.

As I explained on the call, the topics in the Subpoenas are not reasonably calculated to lead to the discovery of admissible information. The Subpoenas seek, for example, "all documents referring or relating to any meetings between [the physicians] and Mallinckrodt" (Topic 1), "[a]ll documents referring, relating to or reflecting Acthar treatment for unapproved uses and doses, such as 5-day dosing for multiple sclerosis" (Topic 4), "[a]ll documents referring, relating to or reflecting Acthar off label treatments" (Topic 5), "[a]ll documents related to meetings and communications between [the physicians] and any other doctor(s) regarding Acthar" (Topic 8), and "[a]ll documents referring, relating to or received during continuing medical education (CME) seminars or meetings during which Acthar treatment was discussed" (Topic 9). But these three physicians are not named or mentioned in IUOE Local 542's Amended Complaint. Furthermore, the Amended Complaint does not raise issues related to off-label treatments or unapproved uses for Acthar by these or any other physicians. Also, the claims in the Amended Complaint do not concern physician-attended meetings, educational seminars,

Arnold & Porter

William H. Platt II, Esq.

October 2, 2019

Page 2

or any relationship between Mallinckrodt and these three physicians. These are just a few examples why the subpoena topics are overly broad and seek information that is not reasonably calculated to lead to the discovery of admissible evidence for IUOE Local 542's case.

Furthermore, the Subpoena topics are not appropriately limited in time or scope. The overbreadth of the topics, coupled with the lack of relevance of information sought, is likely to cause an undue burden on the physicians. This undue burden potentially impacts Mallinckrodt's business because it would have the effect of deterring these physicians, and possibly others, from exercising their medical judgement to prescribe Acthar.

In addition, we are aware of allegations concerning these three physicians in the complaint your firm filed on July 12, 2019—one day after you served the notice of intent to serve the Subpoenas—on behalf of Steamfitters Local Union No. 420 in the United States District Court for the Eastern District of Pennsylvania (2:19-cv-03047) ("Steamfitters"). It would be improper and an abuse of the discovery process, of course, to seek discovery in this case—in which there are no such allegations—in support of claims in some other case.

I suggested on our September 30 call that you consider whether the subpoena topics could be narrowed, but you declined to do so at that time. You also did not explain how the information sought by the Subpoenas from these physicians would be relevant to the allegations in this case. If you provide a good reason for seeking such discovery here, we are willing to discuss potential revisions to the requests.

Sincerely,

/s/ Ryan Watts

Ryan Z. Watts

cc: Wendy J. Bracaglia, Esq.
Daniel J. Sherry, Esq.